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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/052,234 04/22/93 ERSEK

R 910759, CON

EXAMINER
ISABELLA

33M1/0712

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ART UNIT	PAPER NUMBER
3308	13

DATE MAILED: 07/12/93

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

07/12/93

☒ This application has been examined ☐ Responsive to communication filed on 4-22-93 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s), three days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice re Patent Drawing, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, Form PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

- ☒ Claims 31-52 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
- ☐ Claims \_\_\_\_\_ have been cancelled.
- ☐ Claims \_\_\_\_\_ are allowed.
- ☒ Claims 31-36, 39, 46, 48-50, 52 are rejected.
- ☒ Claims 37, 38, 47, 51 are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).
- ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

Art Unit 3308

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 31-36,39-46,48-50 and 52 are rejected under 35 U.S.C. § 103 as being unpatentable over Politano (PUBS; "Periurethral teflon injection for urinary incontinence") in view of Ersek, et al (PUB).

The process for treating urological and gastric disorders is generally disclosed by Politano. It is not clear if there are cavities or pores formed within the particles. Ersek, et al recognize the problems with migration and studied the effects of texturized particles for augmenting soft tissues wherein tissue growth about in the particles increase particles retention in the area of augmentation. To use texturize particles in the treatment of urinary incontinence to prevent particles migration from the implant site would have been obvious to one with ordinary skill in the art from the teachings of Ersek, et al.

Claims directed to particles sizes, see pages 182 and 420 of Politano.

Claims directed to physical characteristics, see Ersek, et al

Claims directed to injection steps and injection volumes, Examiner contends that these steps are standard currently used in the treatment for urological and gastric disorders. It appears that the main inventive concept of the invention is directed to the use of the particular particles which reduces the migratory tendency of the same.


Serial No. 863848

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Art Unit 3308

Claims 37,38,47 and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to David J. Isabella at telephone number (703) 308-0858.



**DAVID J. ISABELLA**  
**PRIMARY EXAMINER**  
**ART UNIT 3308**

DJI  
July 9, 1993